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NO.

in the

Supreme Court

of the

United States

October Term, 1986

STANLEY TRANOWSKI,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT. (Re: Judgment Order 86-1649)

STANLEY E. TRANOWSKI
Petitioner Pro Se

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QUESTIONS PRESENTED FOR REVIEW

1. WERE THE PETITIONER'S CONSTITUTIONAL RIGHTS VIOLATED UNDER THE PROVISIONS OF THE SIXTH AMENDMENT TO THE CONSTITUTION BY THE GOVERNMENT'S DELIBERATE SUPPRESSION OF VITAL EXCULPATORY AND IMPEACHING DOCUMENTS AT TRIAL WHICH PREVENTED HIM FROM ATTACKING THE CREDIBILITY OF TWO IMPORTANT PROSECUTION WITNESSES TO SHOW POSSIBLE BIAS OR INCENTIVE TO SUPPORT THE PROSECUTION'S CASE ?

2. DID THE PETITIONER HAVE A RIGHT TO MOTION THE DISTRICT COURT TO RECUSE ITSELF FROM HEARING THE 2255 MOTION BASED ON THE OPEN ALLEGATIONS OF BIAS AND JURY TAMPERING THAT WAS GIVEN SUPPORT IN THE ORIGINAL TRIAL RECORD ?

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PETITION FOR WRIT OF CERTIORARI
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FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, STANLEY E. TRANOWSKI, respectfully prays that a Writ of Certiorari issue to review the opinion, judgment and order of the United States Court of Appeals for the Seventh Circuit in Case No. 86-1649.

OPINIONS BELOW

There are three (3) separate and distinct Orders entered in regards to this litigation arising from the Circuit Court of Appeals for the Seventh Circuit; and two (2) Orders from the District Court. All the Orders are unpublished.

The first unpublished Order was entered in No. 78-1272, affirming the Jury Trial verdict. (Exhibit "FIVE"). The second unpublished Order was entered in No. 85-1599, which revered and remanded the District Court's decision to grant a new trial, predicated on various allegations cited in a 2255 motion, for further analysis in light of a recent United States Supreme Court decision (i.e., United States v. Bagley, 105 S. Ct. 3375 (1985). (cf: Exhibit "THREE" to Exhibit "FOUR"). Thereafter, the District Court reversed its former decision to grant a new trial in light of Bagley, supra (Exhibit "TWO"). On appeal, The Circuit Court affirmed the District Court's finding. (Exhibit "ONE").

A Petition for Rehearing was filed, and subsequently denied on 12th DECEMBER 1986. (Exhibit "ONE")

JURISDICTION

Petitioner comes under 28 U.S.C.S., Section 2101 (c) since a Motion 2255, 28 U.S.C., is civil in nature.

The Seventh Circuit Court of Appeals denied a rehearing in the above cited case as of December 12th, 1986, as per Exhibit "ONE".

This Court in United States v. Healy, 376 U.S. 75 (1964) held that the time for filing a Petition for Writ of Certiorari does not run until the court of appeals has disposed of the Petition for Rehearing.

Accordingly, the ninety (90) day rule applies in the instant case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The constitutional provision involved in this case is as follows:

UNITED STATES CONSTITUTION, SIXTH AMENDMENT.

The statutory provisions involved in this case are as follows:

FEDERAL RULES OF CIVIL PROCEDURE, RULE 52 (a) (as modified April 29, 1985)

FREEDOM OF INFORMATION ACT, (FOIA) 5 TITLE U.S.C., sec. 552 (a) (b)(2) (b) (7)

STATEMENT OF THE CASE

A: Procedural History

Petitioner was tried and convicted on a single count in violation of 18 U.S.C., sec. 472. He received a six year sentence. On direct appeal his case was affirmed from the Bench. (Exhibit "FIVE"). While incarcerated Petitioner received documents through his FOIA lawsuit, which showed that the Government intentionally suppressed vital impeaching and

exculpatory documents, which could have been used to impeach the only purported eye-witness one PETER MC GHEE, and immediately filed a 2255 petition. Prior to a limited evidentiary hearing held in March, 1985, since the Government denied that the FOIA documents were never denied prior to or during trial, a deposition was ordered of Petitioner's former court-appointed attorney, Mr. RICHARD KUHLMAN. Said deposition was held on September 26, 1984, at the U.S. Attorneys Office in Chicago. Attorney KUHLMAN testified that he had no independent memory that the documents were ever given to him at any time. At the evidentiary hearing the District Court Judge held, over the protestation of the Government, as he did before the hearing, that the Government suppressed the vital, impeaching documents, denying a fair trial to Petitioner, and ordered a new trial. The Government appealed and falsely stated that only a single document i.e., the COZZA REPORT OF '74, was at issue. The Circuit Court of Appeals reversed and remanded in light of This Court's decision in United States

v. Bagley, 105 S.Ct. 3375 (1985). (Exhibit "THREE"). On remand the District Court reversed its order of a new trial. (Exhibit "TWO"), and dismissed the 2255 petition. On appeal the Circuit Court affirmed the District Court findings, but did not go into the substance of the other allegations raised in the 2255 motion in the District Court, while agreeing that Petitioner had a right to get an adjudication on them, in spite of the Government's assertion that those issues were waived in the District Court and on appeal.

REASONS FOR GRANTING CERTIORARI

1. THE GOVERNMENT'S DELIBERATE SUPPRESSION OF VITAL EXCULPATORY AND IMPEACHING DOCUMENTS IMPROPERLY PROHIBITED PETITIONER FROM ATTACKING THE CREDIBILITY OF TWO IMPORTANT PROSECUTION WITNESSES TO SHOW POSSIBLE BIAS OR INCENTIVE TO SUPPORT THE PROSECUTION'S CASE, IN VIOLATION OF THE SIXTH AMENDMENT.

ARGUMENT

The decision of the Court of Appeals for the Seventh Circuit should be reviewed by this Court to resolve all doubt as to the application of the Bagley decision as it is applied to 2255 motions (United States v. Bagley, 105 S. Ct. 3375 (1985), as it comes in conflict with This Court's recently revised version of Rule 52 (a) 28 U.S.C., as amended by This Court on April 29, 1985. (cf: Anderson v. Bessemer City, __U.S.__ 105 S. Ct. 1504 (1985).

The Seventh Circuit Court's panel decision readily overlooks the central issue raised in petitioner's 2255 motion, and which distinguishes his case from the important principle facts held in Bagley, supra. We are not dealing with a single suppressed portion of a document in this case as was the argument raised in Bagley. Rather, as was shown at the evidentiary hearing held on March 4th-11th, 1985, there was a presentation of at least fifteen (15) suppressed

FOIA (i.e., Freedom of Information Act) documents that were intentionally withheld by the Government which could have been utilized in a vigorous cross-examination of the only purported eye-witness ---PETER MC GHEE, a 13 year old boy, who has a bad left eye and had to wear corrective glasses for proper vision; and yet, was not wearing those glasses at the time of his confrontation with the suspect. The Government had never surrendered those suppressed FOIA documents either prior to, or during the course of Petitioner's jury trial. (Furthermore, the prosecution subsequently also suppressed those same incriminating documents in the related trial of Petitioner's brother.) (See: United States v. Tranowski, 659 F. 2d 750 (7th Cir. 1981), and as was pointed out by counsel at the evidentiary hearing held on March 4-11th, 1985, and also by deposition by Petitioner's trial counsel. (See: 3 TR. Vol. 11, pp. 94-95).

On the several appeals before the Seventh Circuit the Government argued about a single document, THE COZZA REPORT OF '74, whereas in actuality the "Cozza Report" merely served as the catalyst to ressurrect other suppressed documents which could have been utilized not only to impeach witness PETER MC GHEE, but also his only corroborating witness, ROBERT PUSELLO (his "Boss") who denied unequivocally that he had no prior contact with the Chicago Police, or the United States Secret Service concerning matters of the case prior to January, 1975, whereas suppressed documents readily showed that PUSELLO was interviewed the very same night of the crime, May 12th, 1974, and that it was PUSELLO and not MC GHEE who supplied Chicago Police and Secret Service Agent COZZA with the descriptions of the alleged suspects, in contrast with the suborned perjury that was executed in two trials. In Petitioner's trial held in 1977 and the follow-up trial of Petitioner's brother in January 1980, PUSELLO denied from the witness

stand his prior involvements in the case, because there are strong showings from the suppressed FOIA documents that PUSELLO was a police informant at that time.

On remand, after the District Court had initially allowed a new trial on the evidence presented at the 2255 hearing held on March 4-11th, 1985, the Seventh Circuit Second-guessed the importance of the COZZA REPORT OF '74, in which Police Officer ROBERT BISWURM, by the statements of facts given to him by witness PETER MC GHEE, telephoned Secret Service Agent JOHN M. COZZA in October 1974, and informed him as to where the alleged "suspect" lived. Thus, witness MC GHEE placed the Secret Service on the doorstep of one STANLEY SIKORA, who became such a prime suspect in the case that the Secret Service conducted an in-depth investigation, and round-the-clock surveillance of the SIKORA residence for a period of six (6) months; had SIKORA's picture pulled from the Rogues Gallery of the Chicago Police Department, and submitted it in a picture show-up to the various crime victims.

In fact, MC GHEE initialed the picture of STANLEY SIKORA; and emphatically denied that he did so at the evidentiary hearing held on March, 1985.

Petitioner's jury had a right to know about STANLEY SIKORA with all of its investigative ramifications ---led to the Secret Service as a suspect in the case by witness PETER MC GHEE. Petitioner's jury was entitled, as a mere modicum of Justice to have before it for its analysis and consideration the facts of MC GHEE's bad eyesight, his numerous gleeful tailing escapades of suspects with other boys, and MC GHEE's denial from the witness stand that he discussed the crime with no one, but "only with my boss" (i.e., ROBERT FUSELLO) ---whereas in fact, later released suppressed FOIA Documents support the fact that MC GHEE committed suborned perjury in two separate trials with Government connivance.

The integrity and credibility of MC GHEE were key issues in Petitioner's case ---and that is exactly the point that the District Court took into account when he granted Petitioner a new trial on March 11th, 1985.

Likewise, at the behest of Judge GRADY in ordering a deposition to be taken of Petitioner's former court-appointed trial counsel about the suppression of the FOIA documents, in speaking of suppressed "fingerprints and palmprints" at trial, the following was asked:

> TRANOWSKI: Now, likewise, if you had known about that palmprint on one of the notes, would you have challenge the government's introduction of those bills or made them indicate whether or not they compared it to the suspects STANLEY SIKORA, IVAN FERGAN, or the other unknown passer or passers ?
>
> MR. KUHLMAN: (Attorney) Just going on the assumption, I assume that if I had known of other named suspects, I would have wanted to know if the palm prints or fingerprints that were found, if they matched the palm or the fingerprints of those suspects."
>
> (Deposition of Attorney RICHARD KUHLMAN, held September 26, 1984,p. 58 at the U.S. Atty. Office)

Because of the Government's deliberate suppression such an examination never occurred at trial. Evidence showed there was other suspects in the case.

Petitioner's trial counsel in December, 1977, was denied the right to an effective cross-examination of witnesses PETER MC GHEE and ROBERT FUSELLO, based on the Government's deliberate pre-trial and in-trial suppression of at least fifteen (15) now revealed FOIA documents (with at least a minimum of 33 documents still being suppressed in their entirety) which could have had a marked effect upon the jury's decision to convict, in violation of the Sixth Amendment.

Accordingly, the Seventh Circuit violated the revised mandate of Rule 52(a), which became effective August 1st, 1985 (after the Bagley decision of July 1985), expanding the oral testimony rule determination of the District Court to also include documentary evidence, or a combination of oral and documentary evidence.

In prior cases the Seventh Circuit held with the majority of the other Circuits that the weighing of the conflicting evidence and the credibility of witnesses was for the trial court and its findings would not be disturbed

unless they were clearly erroneous. (See: United States v. Sells, 498 F. 2d 912, 913-14 (7th Cir. 1974); Ohrynowicz v. United States, 542 F. 2d. 715 (7th Cir. 1976); Hearn v. United States, 194 F. 2d 647 (7th Cir. 1952).

In the Hearn case, supra, a panel of That Court said:

> "***Findings of fact cannot be set aside by an appellate court unless clearly erroneous. This rule applies likewise to all reasonable inferences of the trial judge.***"
>
> (Hearn, supra at p. 469)

The Hearn case is still controlling in the Seventh Circuit, --except as it applies to Petitioner. That Court never did resolve This Court's holding in United States v. Johnson, 327 U.S. 106-113 (1945) in which the Supreme Court admonished a panel of the Seventh Circuit for interferring with the findings and rejection of a District Court's decision, denying a motion for a new trial. The Johnson case is analogous to the current Bagley decision in that the Supreme Court in both cases reversed and remanded the circuit court of appeals (7th and 9th Circuits) rulings which overrode the

District Court's determination as serving as the initial fact-finding body.

Regardless of the standard that the District Court judge utilized in coming to his conclusion that Petitioner was not originally given a fair trial, his decision under Rule 52(a) should not have been disturbed, since there is ample evidence to support his conclusion. Judge GRADY heard the witnesses, analyzed the suppressed FOIA documents (in spite of the Government's repeated protestations that those documents were surrendered during the course of trial); rejected MC GHEE'S "positive identification" of Petitioner and granted a new trial. However, upon remand by the Seventh Circuit, in view of the Bagley case, the District Court judge, now double-talking himself gave credence to witness ROBERT BISWURM testimony ---a former police officer and now an attorney --- testimony which the District Court rejected at the evidentiary hearing as coming from a "faint mind", since the witness could not even remember that he had previously testified in the related case of Petitioner's brother in United States v. Tranowski, 659 F. 2d.

750 (7th Cir. 1981), in which BISWURM gave damaging evidence against witness MC GHEE.

Upon remand the District Court exercised a double-talk and double-think attitude of the purest kind in that the Court took the same passive attitude as the Circuit Court in "*** wanting this case to come to an end" and took the easy route to "second-guess" as to what Petitioner's jury would have thought. This is Judicial straining to achieve a remedy. This is not Justice, nor a clarification of the issue either under the Bagley decision or under Rule 52 (a).

2. THE SEVENTH CIRCUIT FAILED TO REACH THE CONTOURS OF THE 2255 MOTION, IN WHILE AGREEING THAT ISSUES REJECTED BY THE DISTRICT COURT CAN BE RAISED ON APPEAL, FAIL TO APPLY LAW TO THE ISSUES DEMONSTRATING THEIR REJECTION.

Beside the suppression of evidence issue raised in the 2255 motion, Petitioner also demonstrated that the District Court judge should have recused himself from hearing the 2255 motion based on personal bias and as the

trial transcript shows an improper and illegal communication transpired between a member of the jury and the trial judge while the trial was in session, outside the presence of the Petitioner or his counsel, which subsequently led to the indictment of Petitioner's brother, who served as his witness. (See: 76 CR 803, Tr. 509-510). When counsel asked the Court for clarification of the issue, the following colloque occurred:

MR. KUHLIAN: Excuse me, one question I would have, was that comment about the flowers then made by someone in the jury ? I did not realize that.

THE COURT: I have no comment about that.

(76 CR 803, Tr. 509-510)
Emphasis supplied

It might be appropriate for a sleazy politician to use the expression " NO COMMENT " but it has no place in a courtroom, if Justice is to be above reproach, and suspicion of jury tampering is to be avoided.

Under the circumstances of this case, under the 2255 mandate, there is ample authority which holds that in circumstances where the trial court has expressed personal bias, the better course of action as a means of judicial propriety is to permit another judge to hear the 2255 motion. (See: United States v. Hayman, 342 U.S. 205, 210-219, 72 S. Ct. 263, 96 L. Ed. 375 (1974).)

CONCLUSION

The deliberate suppression of the now revealed FOIA documents cannot be minimized. So vital was MC GHEE'S testimony that at the evidentiary hearing Judge GRADY, pointedly stated:

> "***But as Mr. SCHELLS (defense counsel) correctly points out, without the identification by PETER MC GHEE, there would be no case here, there would be no case for a jury. There would be merely suspicion. In fact, without the testimony of MC GHEE, there is not even a suspicion that TRAMONSKI passed the bills since no one else beside MC GHEE identified him as the passer.***"
>
> (3 TR 54, Vol. 3, transcript of Evidentiary Hearing held on March 4th-11th, 1985).

Petitioner submits that he was improperly prohibited from attacking the credibility of two important prosecution witnesses by showing possible bias or incentive to support the prosecution's case, in violation of his Sixth Amendment rights to a fair and impartial trial.

For the reasons stated above in addition to the Seventh Circuit's failure to analyze the other alleged constitutional violations raised in the district court, it is respectfully urged that this petition for certiorari should be granted.

Respectfully Submitted,

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Appendix